

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 482 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
(No. 1 to 5 NO)

STATE OF GUJARAT

Versus

NATWARLAL GANESHBHAIMAKWANA

Appearance:

1. Special Criminal Application No. 482 of 1986
MR. K.C SHAH, LD.PUBLIC PROSECUTOR for Petitioners
MR VIJAY H PATEL for Respondent

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 15/09/97

ORAL JUDGEMENT

Per: S.D. Dave, J :-

The present petition under Article 227 of the

Constitution has been directed against the orders pronounced by the Ld. Sessions Judge, Sabarkantha at Himatnagar, in Criminal Appeal No. 5 of 1986 dated 11th. April 1986, under which the orders of confiscation of the Motor Truck No. GTK-5253 came to be quashed and set aside.

The Respondent before us Natwarlal Makwana happened to be the Power of Attorney of one Smt. Jasumatiben Shah, who was the owner of the above said motor truck. The said truck which was found to be carrying contraband forest produce, namely fire wood of Mahuda tree came to be intercepted near Narol and later on, after following the requisite procedure the truck came to be confiscated. In the Appeal, while setting aside the orders of confiscation, the Ld. Sessions Judge has taken in to consideration the fact that, driver Danaji Dharmaji and the power of attorney- the Respondent before us had different versions to be given before the Forest Officer. It was the assertion on the part of the power of attorney that the driver had preferred to utilise the vehicle for the transport of the contraband forest produce, without his consent and under his ignorance. The Court below has also taken in to consideration an important aspect of the matter that the contraband forest produce was of the value of Rs.500-00 only, and that the same was sold by one farmer Natwarsing.

It was sought to be canvassed before us by ld. Government Counsel Mr. Shah at the initial juncture that the confiscation was obligatory and that, the Sessions Judge could not have interfered with the orders of confiscation. But this contention coming from ld. Govt. counsel Mr. Shah cannot be accepted, in view of the say of this Court in State of Gujarat, v. Shantilal Mansukhlal Mistry & Ors, 36 (1) G.L.R. pg.860. It was a case in which the orders of confiscation pronounced by the Deputy Conservator of Forests, Devgadh Baria, came to be quashed and set aside by the Ld. Addl. Sessions Judge, panchmahal at Godhra, and the penalty of Rs.20,000-00 came to be imposed.

Upon hearing ld. counsels appearing before us, we are of the opinion that, regard being had to the various aspects of the matter, and especially to the value of the contraband forest produce, the present petition require to be allowed in part and some penalty requires to be imposed upon the Respondent. We therefore allow the present petition, and while modifying the orders under challenge, we say that the Respondent shall

pay the penalty in sum of Rs.5000-00 within a period of six weeks hereof. This is by way of substitution of penalty of confiscation. The above said amount of penalty shall be paid by the Respondent before the Sessions Court, Sabarkantha at Himatnagar. Rule is made absolute to the above said extent only.

/vgn.